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Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	DEPT. OF MEDICAL ASSISTANCE SERVICES
Virginia Administrative Code (VAC) citation	12VAC 30-120, 30-141
Regulation title	Waivered Services — Medallion II; and Family Access to Medical Insurance Security Plan (FAMIS)
Action title	Dental Program for Titles XIX and XXI
Document preparation date	

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Preamble

The APA (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The Administrative Process Act (Section 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a

regulation to take effect no later than 280 days from its effective date. This suggested emergency regulation meets the standard at *COV 2.2-4011(i)* as discussed below.

This regulatory action qualifies as an emergency, pursuant to the authority of the *Code of Virginia*, 1950 as amended, § 2.2-4011, because it is responding to a mandate in the 2004 Virginia Appropriations Act (Item 322 H) that states “The Department of Medical Assistance Services shall have the authority to amend the Medallion II waiver to allow the Department to carve out dental services provided to children under the age of 21 from Medicaid managed care. In addition, the Department shall have the authority to amend the State Plans for Title XIX (Medical Assistance) and Title XXI (Family Access to Medical Insurance Security) ... to provide dental services to these children on a fee-for-service basis.” In addition, Item 326 M of the 2004 Appropriations Act provides DMAS authority to promulgate emergency regulations to implement changes to the Medallion II waiver. The carve-out of dental services for adult Medallion II enrollees falls within this legislative authority.

The Governor is hereby requested to approve this agency’s adoption of the emergency regulations entitled Medallion II and Family Access to Medical Insurance Security (FAMIS) (12 VAC 30-120-380 and 12 VAC 30-141-200) and also authorize the initiation of the promulgation process provided for in § 2.2-4007.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this regulatory action is to expand the availability and delivery of dental services to pediatric Medicaid recipients; to streamline the administrative processes; and to remove impediments to the efficient delivery of dental services and reimbursement thereof.

Legal basis

Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance and to administer and amend the Title XXI State Plan (FAMIS). The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance and the Title XXI State Plan according to the Board’s requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

The section of the State Plan for Medical Assistance that are affected by this change are: Waivered Services – Medallion II (12VAC30-120-380), and Family Access to Medical Insurance Security Plan (FAMIS) (12VAC30-141-200).

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
12 VAC30-120-380(A)(2)		Medallion II MCO responsibilities: list of services reimbursed directly by DMAS include school health services and community mental health services.	This section is revised to add <u>“dental and orthodontic services for children up to age 21; for all others, dental services as described in 12 VAC 30-50-190”</u> to the list of services directly reimbursed by DMAS.
12 VAC30-141-200(A)		Commonwealth's Title XXI State Plan utilizes two benefit packages within FAMIS.	This section is revised as follows: <u>“MCHIPs. Managed Care Entities. Services directly reimbursed by DMAS include dental and orthodontic services for children up to age 19, school health services, and community mental health rehabilitative services.”</u>

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

In response to the 2004 Appropriations Act, DMAS researched the key issue of whether to administer the dental program completely “in-house” or to contract with a dental benefits administrator (DBA). DMAS reviewed the advantages/disadvantages of administering the program in-house and through a DBA through: (i) information obtained from DBAs specializing in serving Medicaid populations, (ii) internal analysis of the DMAS systems and staffing infrastructure, and (iii) discussions with dental community and advocacy groups. In addition, DMAS met and discussed the two delivery models under consideration with the Department’s Dental Advisory Committee (DAC) and the Virginia Dental Association (VDA). As a result of these actions, DMAS concluded that contracting with a DBA for the administration of dental

services represents the best chance for increased provider participation and pediatric dental utilization.

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment and is not expected to affect disposable family income.